power, for without it no department can be independent.

We are not here dealing with the general power to appoint, but we are dealing with a simple phase of the general question, and we do no more than affirm that each department must have and does have some appointing power, and that where an appointment is essential to the proper exercise of a judicial duty, the court concerned has authority to make the appointment. If this be not true, then no court can appoint a guardian, an administrator, a receiver, a referee, an appraiser or commissioner. It is, in truth, impossible to conceive of the existence of an independent judicial department without the power to make some appointments. The quotation which we have made lays down the correct rule, if we understand it correctly—that is, that the power to appoint to office is an executive function, but may be exercised by the Legislature or the courts as an incident of the principal power, that is, when necessary to the exercise of their legislative or judicial power. This must be so, otherwise it would be impossible for either the judicial or legislative departments to exercise the powers delegated to them. The following is a quotation from State vs. Denny, 113 Ind., beginning on page 386: "It is claimed that the appointment to an office is an executive function, and that by the terms of our Constitution the General Assembly is prohibited from filling an office created by it, unless such office is connected with the duties imposed upon it as a legislative body." This contention arises out of the provisions of Section 1, Article 3, of the Constitution. In the case of Wright vs. Defrees, 8 Ind., 298, it was said by this court that "the powers of the three departments are not merely equal. They are exclusive in respect to the duties assigned to each. They are absolutely independent of each other."

In the case of Lafayette, etc., Railroad Company vs. Larger, 34 Ind., 135, this court, in speaking of the above constitutional provision, says: "The same division of powers exists in the federal Constitution, and in most, if not all, of the State constitutions, and is essential to a maintenace of a republican form of government. These departments of government are equal, coordinate and independent. The duties imposed on each are separate and distinct, and it is expressly provided that no person charged with official duties under one of these departments shall exercise any of the functions of another. The persons charged with the execution of these powers are alike elected by and responsible to the people, in whom resides the sovereignty of the State. This division of power prevents the concentration of power in the hands of one person or one class of persons." The same language is used, substantially, in Smith vs. Myers, 109 Ind., 1; State vs. Governor, 1 Dutch, 331; ex parte Darnett, 32 Me., 503; Low vs. Low, 8 Ga., 360; Manson vs. Smith, 8 R. I., 192; Houston, etc., R. R. Co. vs. Randolph, 24 Texas, 317; People vs. Bissell, 19 Me., 229; Western, etc., R. R. Co. vs. DeGroff, 27 Minn., 1; Dickey vs. Reed, 73 Ill., 239; Rice vs. Austin, 19 Minn., 103; Locomb vs. Killeson, 29 Minn., 565; Sill vs. Village of Corning, 13 N. Y., 297; People vs. Albertson, 55 N. Y., 50; Cooley Const. Lim., star pages 87, 88, 93, 114, 175; Sedgw. Const. and Stat. Constr., second edition, 132, 138, 184.

Judicial power is the power to construe and interpret the Constitution and the laws and make decrees determining controversies, and is vested in the courts. The executive power is the power to execute the laws, and is vested in the Governor of the State, the administrative officers of the State, counties, townships, towns and cities. Then to which one of the departments does the appointment to office belong? If the General Assembly should create an office by statute, duly passed by it, providing that it should be filled by appointment, the act of filling such office is a partial execution of the law. Generally, then, the appointment to an office is an executive function. It must be conceded, however, that it is not every appointment to office which involves the exercise of executive functions, as, for instance, the appointments made by judicial officers in the discharge of their official duties, or the appointment, made by the General Assembly, of officers necessary to enable it to properly discharge its duties as an independent legislative body, and the like. Such appointments by the several departments of the State government are necessary to enable them to maintain their independent existence, and do not involve an encroachment upon the functions of any other branch. But the appointment to an office like the one involved here, where it is in no manner connected with the discharge of legislative duties, we think involves the exercise of executive functions, and falls within the prohibition of Section 1, Article 3, of the Constitution. In Evansville vs. State it was said: "The power to appoint to office is not a legislative function, but belongs to the executive department of the government," and in the cases of Lafayette, etc., R. R. Co. vs. Geiger, supra.; Hawkins vs. Governor, supra.; Wyman vs. Southard, 10 Wheat., 1; Greenough vs. Greenough, 11 Pa. St., 489, and Cooley Const. Lim., 90; (see State ex rel. Holt vs. Denny, 118 Ind., 449; Am. & Eng. Encyp. of Law, Vol. 3, 686,) we find the following statement of the law: "The power of appointing and removing subordinate executive officers is generally, by the American constitutions, vested in the chief executive."

We come now to the other branch of the question: Does the Constitution confer upon the Legislature express power to fill a vacancy in an office of the character of the one under consideration, or like that of Director of the Department of Geology and Natural Resources, with such authority? If there is such a constitutional provision we have failed to find it, and none such has been called to our attention. The word "expressly" being the word that is employed in the constitutional provision, Section 1, Article 3, Worcester defines as follows: "In direct terms; plainly." He defines the word "express" as follows: "Given in direct terms; not implied; not dubious; clear; definite; explicit; plain; manifest." The word "expressly" is defined by Zell as follows: "Not by implication; plainly; distinctly." The word "express" he defines as follows: "To set forth in words; clear; plain; direct; not ambiguous." Webster's dinition of "expressly" is: "In an express, direct or pointed manner; in direct terms; plainly." His definition of the word "express" is: "Directly stated; not implied or left to inference; distinctly and pointedly given; made unambiguous by special intention; clear; plain." The only constitutional provisions that in any way relate to the subject under consideration are Section 13, Article 2: "All elections by the people shall be by ballot, and all elections by the General Assembly, or either branch thereof, shall be viva voce." Section 30, Article 4: "No Senator or Representative shall, during the term for which he may have been elected, be eligible to any office the election of which is vested in the General Assembly; nor shall he be appointed to any civil office of profit, which shall have been created, or the emoluments of which shall have been increased during such term: but this latter provision shall not be construed to apply to any office elective by the people." Section 10, Article 4: "Each house, when assembled, shall choose its own officers (the President of the Senate excepted); judge the elections, qualifications and returns of its own members; determine its rules of proceeding, and sit upon its own adjournment; but neither house shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which it may be sitting." Section 5, Article 5: "The persons respectively having the highest number of votes for Governor and Lieutenant-governor shall be elected; but in case two or more persons shall have an equal, and the highest number of votes, for either office, the General Assembly shall, by a joint vote, forthwith proceed to elect one of said persons Governor, or Lieutenant-governor, as the case may be." Section 13, Article 5: "When, during the recess of the General Assembly, a vacancy shall happen in any office the appointment to which is vested in the General Assembly, or when at any time a vacancy shall have occurred in any other State office or in the office of judge of any court, the Governor shall fill such vacancy by appointment, which shall expire when a successor shall have been elected and qualified." Article 15, Section 1: "All officers whose appointments are not otherwise provided for in this Constitution shall be chosen in such manner as now is, or may hereafter be, prescribed by law."

All of the foregoing sections, except the last one, are, as will be observed by reading them, so foreign to the question under consideration that we need call attention to none of them, except the last one. It is quite clear, we think, that under the provisions of this section, where the Constitution does not provide otherwise for the filling of a vacancy in an office, that the Legislature may provide the manner in which it shall be filled. But unless it is an office created for the purpose of enabling one of the other departments the better to perform its functions, the power of appointment must be lodged with the executive department. This constitutional provision confers no appointing power on the Legislature, except as to offices in existence when the Constitution came into force. The power to create an office is one thing and the power to appoint the incumbent is another. The one is a legislative act, and the other, as we have seen, an executive function. In Jones vs. Perry 10 Yerger, 59 (30 Am., Dec., 436), it is said: "The fact that the Constitution may prescribe that the mode of appointing the judge shall be by the Legislature does not constitute the Legislature the constituent." (State vs. Kennan, 7 Ohio Stat., 560; Evansville vs. State, supra; State vs. Denny, supra; State vs. Noble, supra.)

To hold otherwise would be to wipe out by judicial construction Article 3, Section 1.

The Legislature, like other departments of the State government, can only exercise such powers as have been delegated to it, and when it steps beyond that boundary its acts, like those of the most humble magistrate in the State who transcends his jurisdiction, are utterly void. [Taylor vs. Potter, 4 Hill, 140; 41 Am. Dec., 277; Rumpelly vs. Village of Oswego, 45; H. How. Pr. R. 247; Campbell's case, 2 Bleud Ch. 209; 20 Am. Dec., 373.] The following from State vs. Noble is equally as applicable to the executive as the judicial department: "The domain of the judiciary is not so extensive as that of the other departments, but no other power can enter that domain without a violation of the Constitution, for within it the power of the judiciary is dominant and exclusive." In Wright vs. Defrees, supra., it was said: "The powers of the three departments are not merely equal—they are exclusive in respect to the duties assigned to each." And Wright vs. Wright, supra, is to the same effect. In the American and English Encyp. of Law, Vol. 3, p. 685, it is said: "Such powers as are specially conferred by the Constitution upon the executive department or upon any designated officer, the Legislature cannot require or authorize to be performed by any other officer or authority," and further, "Where the Constitution confers the power of appointment to office upon the executive department, appointments cannot be made by legislative enactment." But as the opinions delivered in the cases of State ex rel. Holt vs. Denny, supra; State vs. Denny, supra, and Evansville vs. State, supra, discussed and passed upon the power of the Legislature to create offices and fill vacancies therein, and in this particular were concurred in by a majority of the court, we do not understand that the power of the executive department to appoint to offices like the one involved in this case is longer an open question.

As the writer of this opinion said in Evansville vs. State, and says now, speaking merely for himself: "Practical construction is of very little consequence when it is exercised in violation of the plain provisions of the Constitution." It is of more importance and consequence when it is in accord with the Constitution; but whether entitled to much or little weight, to the extent that there has been such construction, it seems to have been in favor of the power of the executive department to appoint officers belonging to the class in question. But suffice as to this. Section 5152, R. S., fixed the term of office of the "State Inspector of Oils" at two years, and as Section 1368, Acts of 1889, Elliott's Supplement, refers to the former act, we are inclined to the opinion that it still governs as to the term of his office, as no term is fixed by the latter act.

As all the officers provided for in the present Constitution were made elective by the qualified voters, which is in this respect radically different from the provisions of the old Constitution, and in view of the fact that soon after the adoption of the present instrument other State officers were created and made elective, we must presume that it was, and is, the spirit and intention of the present Constitution that all such offices as relate to the public at large, either district or State, are elective, and that when a vacancy occurs the executive department may appoint and commission until the next following general election, at which time the people may elect an incumbent to said office. The complaint fails to allege that the Governor of the State had theretofore appointed and commissioned the relator to fill the said vacancy in said office and is, for that reason, technically bad. The said office being a State office, the Legislature could not delegate the power to some other State officer to appoint and commission the relator, though that officer may have been duly appointed and commissioned. In so far as the act of the Legislature seeks to deprive the executive of the State of his constitutional prerogative to fill by appointment vacancies in the offices named in said act of Feb. 26, 1889, it is unconstitutional and void. The said act may antagonize another provision of the Constitution, but as the question is ignored in the briefs of counsel, we have not considered it. We refer to Section 16, Article 4 of the Constitution. Because of the absence of an averment in the complaint that the relator had been appointed by, and held a commission from the Governor of the State, the complaint is bad and the court did not err in overruling the demurrer thereto. Judgments affirmed, with costs.

Chief-Justice Elliott Dissents.

Chief-justice Elliott, with Judge Mitchell, dissented from the opinion of Judge Berkshire, the Chief-justice, in the course of his opinion, stating: "I have no doubt that the act does violate Section 19 of Article 4, of the Constitution. That section reads thus: 'Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in the act which shall not be expressed in the title, such act shall be void as to so much thereof as shall not be expressed in the title.' The act assumes to assemble in one group offices of a radically different character, some of them offices under the police department, others offices in a department of a purely scientific nature. The department of geology is in itself a complete subject, and the provisions of the act relative to coal-oil inspector and mine inspector relate to different subjects. The inspection of mines is a subject of itself, and so is the inspection of coal oil, and regulations on these subjects, since they necessarily interfere with private rights, can only be sustained under the police power of the State, while the establishment of a scientific bureau or department is a subject of an essentially different nature. Subjects so diverse cannot be embodied in one act, for to permit this would be to permit the evil which the provision of the Constitution quoted was designed to destroy." [Here follows a long line of decisions.]

"The act plainly betrays its own weakness, for it declares that it covers four divisions, and of these, three, at least, are complete and distinct subjects, each requiring and receiving different treatment. Names go for but little, and naming the subjects divisions, does not make them mere parts of one general subject. Whether they are each subjects, or all mere parts of one subject, is to be determined from their essential elements, for the Legislature cannot, by any mere form of words, change the nature of a thing, and by that course evade the Constitution."

In this opinion it was held that the Governor has no appointing power beyond that which the Constitution specially confers upon him. Quoting from authorities it was stated in the opinion: "Perhaps the principle has never been more clearly stated than by that great constitutional lawyer whose statements, as Emerson says, 'lay in daylight.' That lawyer said the inferences which, I think, follow from these views of the subject are two: First, that the denomination of the department does not fix the limits of the power conferred on it, nor even their exact nature; and, second (which indeed follows from the first), that in our American government the chief executive magistrate does not necessarily and by force of his general character of supreme executive possess the appointing power. He may have it or he may not, according to the particular provisions applicable to each case, in the respective constitutions." [Webster's Speech on the Presidential Protest."

CHIEF OF THE BUREAU OF STATISTICS.

The People Under Constitutional Provision Can Elect Nearly All Officers.

Judge Olds delivered the leading opinion in the case against Wm. A. Peelle, jr., the Chief of the Bureau of Statistics, holding office under election by the Legislature. It was concurred in by Judges Berkshire and Coffey, with Chief-justice Elliott and Judge Mitchell dissenting. It was as follows:

The relator filed his information to obtain possession of the office of Chief of the Indiana Bureau of Statistics to which office he claimed to have been duly appointed by the Governor of the State, and for the removal of the defendant, William A. Peelle, jr., who, it is alleged, had usurped and illegally continued to hold such office. The defendant demurred to the information in the court below, stating two causes of demurrer: First, that the complainant does not state facts sufficient to constitute a cause of action; second, that the plaintiff has not legal capacity to sue. The court sustained the demurrer, to which ruling the plaintiff excepted at the time, and elected to stand on the information as filed. Therefore the court rendered judgment for the defendants. From this judgment the plaintiff appeals, and assigns as error the ruling of the court in sustaining the demurrer to the information. It is contended by counsel for the appellee that, notwithstanding the relator may be entitled to the office, and the defendant has usurped and continues to illegally hold it, the information does not state facts sufficient to entitle the relator to the relief asked, and that the demurrer was rightfully sustained. This question we have considered, and think the information not subject to the objections urged to it, and that it is sufficient. It alleges facts showing the date of appellant's appointment, that there was at the time a vacancy in the office, that the relator was duly appointed by the Governor of the State and that he is eligible to the office, that the defendant had usurped and illegally held it and states that he made a demand for the possession of the office.

This brings us to the consideration of the chief cause and ending questions in the case. The Legislature of the State in 1879 passed an act creating a Department of Statistics and the first section of the act, R. S. 1881, Section 5717, declared the purpose of that to be "for the collection and dissemination of information hereinafter provided by annual reports made to the Governor and Legislature of the State." The second section provided for the appointment of a chief, and is as follows: "The Governor is hereby authorized to appoint, as soon after the passage of this act as convenient, biennially, some suitable person to act as chief, who shall have power to employ such assistance as he may deem necessary, and said officer and assistants shall constitute the Indiana Bureau of Statistics, with headquarters to be furnished by the State." Section 3 prescribed the duties of the bureau, as follows: "The duties of said bureau shall be to collect, systematize, tabulate and present, in annual reports, as hereinafter provided, statistical information and details relating to agricultural, manufacturing, mining, commerce, education, labor, social and sanitary conditions, vital statistics, marriages and deaths, and to the permanent prosperity of the productive industry of the people of the State." Section 4 made it the duty of all persons, officers and corporations to give and furnish information on blanks and to answer to questions relating to the duties of the bureau. The act provided for the salary of the chief, and prescribed penalties for failures to give information by an act passed in 1883. (Elliot Sup., Sec. 1852.)

Section 2 of the act of 1879 was amended, and the amended section made it the duty of the two houses of the General Assembly, in joint convention, to select at its regular biennial sessions its chief, and, in case of vacancy in the office by death, resignation or dismissal, the Governor should supply the vacancy by appointment, and provided that the first election of such chief should be held on the taking effect of the act. In 1889 the Legislature passed an additional act relating to such Bureau of Statistics by which they imposed additional duties on the chief of the bureau. Section 1 provided that, in addition to the other duties now imposed by law on the Chief of the Indiana Bureau of Statistics, he shall collect, compile and systematize statistics with reference to the subject of labor, as to social, educational, industrial and general conditions, wages and treatment of all classes of our working people, to the end that the effect of the same may be shown, and shall report to the Legislature, in convenient form, the results of his investigation. Section 2 provided that the duties of such bureau shall be to collect, in the manner hereinafter provided, assort, systematize, print and present biennial reports to the Legislature statistical details relating to all departments of labor in this State, including the penal institutions thereof, particularly concerning the hours of labor and mechanics employed, the number of apprentices in such trade, with the nativity of such laborers, mechanics and apprentices, wages earned, savings from the same, the culture, moral and mental, with age and sex of persons employed, the number and character of accidents, the sanitary condition of institutions, as well as the influence of the several kinds of labor and the use of intoxicating liquors upon the health and mental condition of the laborers, the restrictions, if any, put upon apprentices when indentured, the proportion of married laborers and mechanics who live in rented houses, with the average annual rental of the same, the average members and the families of married laborers and mechanics, the value of property owned by laborers or mechanics of of foreign-born upon their arrival in this country, and the length of time they have resided here, together with all other matter pertaining to the subject. Section 3 authorized the chief and deputy to examine witnesses, and gave them power to compel persons to produce and give the information desired. Section 4 prescribed penalties for a refusal to furnish information and answer questions asked by the chief and his deputy. Section 5 authorized the employment of a deputy by the chief at a salary of $1,000 per annum, and the employment of other assistants. Section 6 appropriated $5,000 additional per annum to carry out the provisions of the act. Section 7 allowed the chief $600 additional salary, making in all $1,800 per annum. By Section 8 it is made the duty of the chief to transmit immediately on publication one copy of the biennial report of the bureau to each county and State officer in Indiana.

It is contended on the part of the appellant that the Chief of the Indiana Bureau of Statistics is a State officer, and that the law is unconstitutional in so far as it provides for the election of such officer by the General Assembly, and that the election held by the General Assembly, at which the appellee was elected, was illegal and void and gave the appellee no title to the office, and that there was a vacancy in such office at the time the relator was appointed, which the Governor had the right to fill by appointment, which he did by the appointment of the relator, Worral. On the other hand, it is contended by the appellee that it is a legislative office, which the General Assembly had a right to fill by election, as prescribed by the law, and that although it may not be a legislative office and is, in fact, a State office, yet the General Assembly had the right to fill such office by an election as provided for by the act of 1883; that the Legislature has the right to create a State office and prescribe by law that the General Assembly shall elect such officer.

It is admitted, and must be, that the Legislature of the State may exercise appointing power and select officers to fill the various offices which are peculiarly related to and connected with the exercise of its constitutional functions and such as are necessary for it to appoint and maintain its independent existence, and this we think the limit of the appointing power of the Legislature, unless additional has been given by the express provisions of the Constitution, or acquired by construction under the rules of practical exposition. We have therefore set forth in detail the provisions of the various acts relating to the object of creating the Indiana Bureau of Statistics, and the duties and powers of the chief of such bureau, and from such provisions we have to determine whether or not such office is one which the Legislature has the right to elect. It is contended by counsel for appellee that the object of the bureau is for the purpose of having collected and systematized such facts pertaining to labor and kindred subjects as might become important to direct the General Assembly in enacting wise legislation, and to that end they require that the chief of such bureau shall make a [illegible] complete detailed report of his invest[illegible]ion to them, and that he shall make such recommendations with reference thereto as he may deem proper. We cannot agree with the theory. The first section of the act of 1879 provides that the chief shall report both to the Governor and the Legislature, and that section has not been amended or repealed, and is still in force. The act of 1889 makes it the duty of the chief to send one copy of his report, as soon as printed, to each county and State officer. If we are to limit the object and purpose of the bureau to furnishing information to those to whom the chief is to report or furnish copies of the report, the object is as much to furnish information for the Governor and the individual State and county officers of the State as to furnish information to the Legislature, for they are each and all to be furnished with a report and the information it contains.

We think the object and purpose of creating the bureau and putting an officer at its head is much broader than that contended for by counsel for appellee. It is to gather and systematize statistical information and details relating to agriculture, manufacturing, mining, commerce, education, labor, social and sanitary conditions, vital statistics, marriages and deaths, and the prosperity and productive industry of the people of the State; that all the people of the State may know the facts gathered relating to the resources of the State, the condition of its laborers, its social and sanitary conditions, and as to the education and prosperity of its citizens, for the good of the people of the State, and the development of its industries and good of its citizens. To this end the reports are required to be distributed so as to be accessible to all, and not only that it may be known, and the information furnished to the citizens of the State, but that the people of other States and the world may know in reference to the products of the State, and of our mining, manufacturing and educational interests, the condition of our laborers, and our social and sanitary conditions. To this end it is provided for a liberal distribution of the reports of the chief, that one may be placed in the hands of every State and county officer. When the people are put in possession of this information, the legislators, who are of the people, elected by and come from the people at frequent intervals, are possessed of this information, and prepared to direct wise legislation. When all the people are possessed of this information, it is far better than if the legislators were informed of it. If the information disclosed such a state of facts as that suggested, and required legislation, it would provoke discussion as to the proper legislation to remedy any evil which might exist within the State. Remedies would be suggested and legislators selected whose views corresponded with the views of the majority, and thus the will of the majority of the people of the State would be expressed by a law prescribing a remedy for the evil, if one existed, or the betterment of the people, or development of the industries of the State.

Fortunately, in passing upon the question, we are not left to our own views alone in determining the question as to whether this is a legislative office or not, with the Legislature claiming it as such and the Governor denying that it is, for we have evidence in the law itself that the Legislature which enacted the first act upon the subject creating the bureau, and providing for a chief, did not regard it as a legislative office. The act of 1879 provided that the Governor should appoint the chief; therefore, we think it must be conceded that the Legislature creating the office did not regard it a legislative office. If it had been so regarded by that Legislature it would have elected its officers. Certainly the legislative department would not call upon another department of the State government to appoint or elect an officer that was within its perogative to elect. Indeed, it seems to us that there can be no reasonable doubt on the question of the nature of the office. The information to be gathered is for the benefit of the whole people of the State; the duties of the office relate to and effect all the people of the State; the officer is given power to inquire into the business, the finances and social relations of all the people; he is given almost unlimited power to inquire into nearly all matters affecting the interest of the people, and may compel all to answer his questions and furnish the information desired; the officer's salary is paid out of the general funds of the State, and appropriations are made from the general funds to pay the expense of gathering the information. In view of the object of the law and the nature of the office, it is unquestionably a State office, and we find, upon examination of the laws of other States, that offices of this character are not regarded by the legislatures of other States as in any sense legislative offices coming within the prerogative of the Legislature to elect the officers.

Having rendered this concession the next question for determination is the right of the Legislature under the Constitution to create a State office and fill it by the General Assembly electing the officer. This brings us to the consideration of the power of the General Assembly. This must be determined by some general principles. Judge Cooley, in his work on constitutions and limitations (fifth edition, page 7), says: "The theory of our political system is that the ultimate sovereignty is in the people, from whom springs all legitimate authority. Story, in his work on the Constitution (Section 208) says: 'The State, by which we mean the people comprising the State, may divide its sovereign powers among various functionaries, and each, in the limited sense, would be sovereign in respect to the powers confided to each and dependent in all other cases.' Strictly speaking, in our republican form of government the absolute sovereignty of the Nation is in the people of the Nation, and the residuary sovereignty of each State not granted to any of its public functionaries is in the people of the State." Judge Cooley, in the same work, on page 47, says: "In considering the State Constitution, we must not commit the mistake of supposing that because individual rights are granted and protected by them, they must also be considered as owing their origin to them. These instruments measure the power of the rulers, but they do not measure the rights of the governed." Again, on the same page, he says, "A written constitution is in every instance a limitation upon the powers of government in the hands of agents, for there never was a written republican constitution which delegated to functionaries all the latent powers, which lie dormant in every nation, and are boundless in extent and incapable of definition." On page 208 of the same work Judge Cooley says: "It does not follow, however, that in every case the courts, before they can set aside a law as invalid must be able to find in the Constitution some specific inhibition which has been disregarded, or some express command which has been discharged. Prohibitions are only important where they are in the nature of a general grant of powers, and if the authority to do an act has not been granted by the sovereign to its representative it cannot be necessary to prohibit its being done."

From these general and well-settled principles, laid down by Judges Cooley and Storey, then logically flows, and they inevitably and conclusively establish the principle that before the adoption of the Constitution and delegating power to the various departments of government there existed in the sovereign, the people of the State, all power, including the right to elect their own officers, and unless they delegated the power to create an office and elect the officer to some department of the State government that power still rests with the people and the right to create the office is one thing and the right to elect the officer another; and if they have delegated power to create the office and not to elect the officer they (the people) still have the right to elect. It is conceded that the right to create the office is delegated to the Legislature, and we need not consider that question. It is denied by the appellant that the General Assembly has the right to elect a State officer, and it is contended that the Governor has the right to appoint, at least when there is a vacancy, and that there was a vacancy in this case. On the other hand it is contended by the appellant the General Assembly has the right to elect a State officer, and that such power is conferred by Section 1, Article 15 of the State Constitution, which is as follows: "All officers whose appointments are not provided for in this Constitution shall be chosen in such manner as now is or hereafter may be prescribed by law." If such power is conferred at all it is by this section, and we need not consider any other section or clause of the Constitution except such as is necessary to aid in the interpretation and construction of this section. A construction has been given to this section of the Constitution adversely to the theory of counsel for the appellee by decision of this court, in which a majority of the judges of the court concurred. (Jameson vs. Denny, Mayor, 118 Ind., 382; Evansville vs. The State ex rel. Bend et al., 118 Ind., 426; Holt vs. Denny, Mayor, 118 Ind., 449.) It was held that giving the Legislature power to prescribe by law the manner of electing an officer does not confer the power to elect, and that there is a manifest distinction between providing the mode of doing a thing and doing a thing itself. These opinions are supported by the cases of the State vs. Renmore, and Jones vs. Perry, 10 Yerger, 5; 30 Am. Dec. 436. The conclusions rendered in these cases, we think, are correct, and give the proper construction to this section of the Constitution. In this connection it is right to consider and determine what is the proper method of electing State officers, and who have the right to elect. It will be seen by reference to the old Constitution that Representatives and Senators were elected by the people; also county and township officers, and the Governor and Lieutenant-governor were elected by the people. All other State executive officers were elected by joint vote of both houses of the General Assembly, as were, also, the president and judges of the Circuit Courts. The judges of the Supreme Court were appointed by the Governor, by and with the advice of the Senate, and they appointed the clerk of the court. [R. S. 1843, pp. 97, 100, 101 and 102.] The Constitution also provided for the election of other officers by the vote of both houses. By the new Constitution the people changed the system of electing State officers so as to revest in the people of the State at large the right to vote for and elect all administrative State officers prescribed for in the Constitution and all the judges and clerks of the Supreme Court and also provided for the election of the Superintendent of Public Instruction. In the first article and first section of the new Constitution they claim that all power is inherent in the people. By Section 1, Article 3, they divide the powers of the government in three separate departments—the legislative, the executive, including the administrative, and the judicial—and declare and say that no person charged with official duties under one of these appointments shall exercise any of the functions of another except as in this Constitution expressly provided. By Section 1, Article 4, it is declared that the legislative authority of the State shall be vested in the General Assembly, which shall consist of Senate and House of Representatives, and by Section 16, same article, it is declared that each house shall have all powers necessary for a branch of the legislative department of a free and independent State. This is all the general power granted to the department, and it is nowhere provided in what manner an officer to fill an office created by law shall be elected. The Constitution, by its terms, declares and vests the executive power of the State in the Governor, and it specifically authorizes the Governor to fill vacanies in State offices.

There is no provision in the Constitution declaring by whom a State officer shall be chosen or elected to a State office created by law. It seems manifest by the change made in the Constitution, taking away the power granted by the old Constitution to the General Assembly to elect State officers, the people retained the power to elect all State officers created by the new Constitution, and granted to no department of government the right to elect officers to fill the State offices which might thereafter be created by law. Thus one of the principal objects in revising the Constitution was to take from the legislative and executive departments of the government all power to fill State offices by the appointment or election of such officers. In the Constitutional Debates, Vol. 2, page 1238, we find Mr. Holman, who was a member of the convention, saying in a speech: "It will be recollected that we do not intend to confer upon the Legislature the power of appointing." There may possible be two or three officers the appointment of which will be vested in the Legislature, and nowhere do we find the assertion controverted.

We also find in the address issued by that convention to the electors of the State, setting forth the changes proposed, a statement that the Secretary of the State, Auditor of State and Treasurer of State, who were elected under the old Constitution by the Legislature, are now elected by the people. There is also the following statement in regard to the election of judges: "The Supreme and Circuit judges heretofore chosen, the former by appointment of the Governor, confirmed by the Senate, and the latter by joint vote of both houses, are by the new Constitution to be elected by the people, and it is stated that "there is to be elected by the people a prosecuting attorney for each judicial circuit." It seems to be evident that if the office now under consideration had been created by the Constitution the mode of electing the officer would have been declared to be by election by the people. No greater reasons exist why the Secretary of State or the Superintendent of Public Institutions should be elected by the people than the officer of Chief of the Bureau of Statistices. The conclusion we unhesitatingly reach is that, under the new Constitution, which took effect Nov. 1, 1851, the power to elect State officers whose duties are general, and such are the duties of the Chief of the Indiana Bureau of Statistics, remains with the people, and that the proper interpretation and construction to be given Section 1, Article 15, is that State officers shall be chosen by the electors of the State in such manner as may be prescribed by law, and that it is the duty of the Legislature, in creating a State officer, to fix the term of the office and provide for the election of the officer by the people.

On examination we find the construction we have given the Constitution supported by the practical interpretation given to it until within a very recent date. Soon after the adoption of the Constitution the office of Attorney-general was created, and it was provided by law that the officer should be elected by the electors of the State. True, the act provided that the General Assembly should elect to fill the vacancy existing until an election by the people, but the General Assembly adjourned without holding an election and electing such officer, as the act provided. The fair inference is that on more mature deliberation, after the passage of the act, they determined that they had no power to elect, and hence adjourned without doing so. The Constitution provides that the General Assembly shall provide by law for the speedy publication of the decisions of the Supreme Court (Sec. 6, Art. 7), and immediately after the adoption of the Constitution the Legislature created the office of Reporter of the Supreme Court, and provided for the election of the Reporter by the people. Likewise, district officers were created, Courts of Common Pleas were established, and the offices of judges of the Courts of Common Pleas and district prosecuting attorneys were created, and it was provided by law that the judges and prosecutors should be elected by the electors of the respective districts. Without setting out the various provisions in the Constitution vesting appointing power in the Governor of the State, it is our conclusion that the right to fill the vacancies in all such offices is vested in the Governor, the executive officer of the State.

It follows, therefore, that the act of 1883, amending Section 2 of the act of 1879, providing for the election of the Chief of the Indiana Bureau of Statistices by the General Assembly is unconstitutional and void, and the act of 1879 attempted to be amended is still in force. Section 2 of the act of 1879 provides that the Governor shall appoint the chief. In so far as it provides for the appointment of the Governor, it is simply declaratory of the Constitution and gives to the Governor no power that he did not possess by virtue of the Constitution, as by it he held power to fill the vacancy until an election by the people, and the Legislature could give the Governor no greater authority, but this section is valid and operates to fix the tenure of the office. The force and effect of this section is to fix the tenure of the office at two years. [American and English Encyclopedia, Vol. 3, p. 674, note 1; Newland vs. Marsh 19, Ill., 376; the Iowa Ex. vs. Webster County, 21 Iowa, 221.]

Though the law creating the office in question does not provide for the election of the officer by the people, and is silent on that subject, and there is no provision of the statute relating to and providing for the election of this particular officer, yet we think the law creates the office, and when created the people have the right to elect the officer. It would seem that they would have that right, and might elect such officer at a general State election, even if there was no statute in force governing general elections that contemplated the election of such officer. The people cannot be deprived of the right to elect an officer by the neglect or refusal of the Legislature to discharge its duty. But we are not called upon to decide that question, as the general election law clearly authorizes the election of such officers. Sec. 4678, R. S., 1881, reads as follows: "A general election shall be held on the first Tuesday after the first Monday in November in the year 1882, and biennially thereafter on the same day, at which election all existing vacancies in offices and all offices, the terms of which will expire before the next general election thereafter, shall be filled, unless otherwise provided by law. This statute is broad enough, and it was intended to fill all offices which would become vacant before the next general election. The appointee of the Governor would hold until his successor was elected at the next general election after he was appointed and until his successor had qualified. There can be no question but that the people have the right to elect the Chief of the Bureau of Statistics at the general State elections provided for by Sec. 4678, R. S., 1881.

In determining the right of the people to elect a State officer and the appointing power of the Governor, we limit what we have said to offices of the nature and character of the one in question. There may be a class of officers and probably is, whose duties are not general and whom the Governor would have the right to appoint, but in regard to his right to appoint such officers we decide nothing.

The conclusion we reach is that the General Assembly had no power to elect the appellee to the office in question and that such election was void; that the information alleges there was a vacancy in the office; that the appellee usurped the office and illegally held possession of it; that the Governor appointed the relator and he was eligible and is entitled to the office. The court below erred in sustaining the demurer to the information. The judgment is rendered at the costs of the appellee and the cause remanded to the court below with instructions to overrule the demurrer and for further proceedings in accordance with this opinion.

Judge Coffey's Opinion.

In his separate opinion, Judge Coffey, concurring in the opinions of Judges Berkshire and Olds, covered points set forth in the reasoning of the latter concerning appointments under the old Constitution. Referring to the creation of the new instrument, he said:

There is, in my judgment, abundant evidence, both in the Constitution itself and in the debates attending the framing of that instrument, that the convention adjourned under the full conviction that it had fully performed the mission for which it had been called into existence. Every State officer which by the Constitution of 1816 was elected by the Legislature was, by our present Constitution, made elective by the people. If there is any provision in the Constitution which conferred upon the Legislature the power to elect any officer falling strictly within the definition of a State officer charged with duties affecting the whole people of the State, I have been unable to find it, and my attention has not been called to any such provision. The fact that no such provision can be found is to my mind conclusive evidence that it was not intended to confer any such power.

I believe it to be a fact not denied that one of the objects sought to be attained in calling the convention which framed our present Constitution was to effect a complete revolution in the manner of electing State officers by depriving the Legislature of that right, and reserving it to the people. To say that the convention did not accomplish that object is, in my opinion, equivalent to asserting that it adjourned without accomplishing the object for which it was called.

Although the Legislature has created many State offices since 1851 I am unable at this time to call to mind a single instance in which it attempted to fill such office by its own election for much more than a quarter of a century after the adoption of our present Constitution. The claim to such right is of recent origin and in my opinion no such right exists. I am of the opinion that the people at large have the right to elect at any general election the State Geologist and the State Statistician. The moment the Legislature creates such office the right to fill it by election vests in the people, and they cannot be constitutionally deprived of such right. The claim that by reason of the fact that the Legislature created these offices and attached to them peculiar or particular duties gave them the right to fill such offices would apply, I think, as well to the office of the Attorney-general and Reporter of the Supreme Court as to these offices.

The truth is that by delegating to the people the right to elect their Circuit and Supreme judges and Superintendent of Public Instruction the convention furnishes us with unequivocal evidence of its abiding faith in the discriminating intelligence of the people, and their ability to select their own officials, however difficult or complicated their duties might be. Our general election laws are broad enough to authorize the election of these officers, as well as any other State officer, and until such time as the people shall have an opportunity to fill these offices by an election, the Governor of the State has the right, in my judgment, to fill the vacancy by appointment. The officer so appointed would be entitled to hold his office until his successor is elected and qualified, and no longer.

BEAUTIFUL SHOW OF FLOWERS.

Artistic and Elaborate Designs That Caused Great Admiration and Won Prizes.

Despite the inclement weather of yesterday afternoon and evening, the chrysanthemum show and floral exhibition of the Society of Indiana Florists continued to attract a large number of visitors to Tomlinson Hall. Many ladies spent the greater part of the day there, and it furnished a pleasant and instructive place for the children to spend a rainy afternoon. Last night the visitors, while not as numerous as on the preceding evening, were sufficient to fill the main floor of the hall comfortably, and they were amply repaid for the inconvenience experienced in reaching the exhibition through a driving rain and sloppy streets. The moist weather has brightened the growing plants considerably, and the entire collection looks as fresh as when the exhibition was first opened. The concerts, given during the afternoon and evening by Zumpfe's full orchestra, have proven specially attractive. Visitors have thus had the satisfaction of hearing a good class of music, artistically rendered, without the fatigue incident to sitting in narrow quarters. Last night a popular programme was given, including flute and clarionet solos by Messrs. Recker and Lenox. The additional consignment of orchids promised failed to arrive yesterday, but are looked for to-day. Those already on exhibition, while not numerous, include some very beautiful varieties, and have been much admired. In addition to the growing plants, there is an ample supply of cut flowers, including the best varieties of chrysanthemums and roses, on sale, and the moderate prices asked have permitted most of the visitors to take home with them some souvenir of the exhibition.

In the competition yesterday the interest centered mainly in the designs of cut flowers entered for "the city prizes" offered by the Indianapolis Board of Trade for the best and most original design. In this class the first premium of $25 was taken by the Bertermann Bros., of this city; the second by D. W. Cox, of Crawfordsville, and the third by Charles Reiman, of Indianapolis. The design of the Bertermann Bros. was a floral book, lying open and with a half-turned leaf, on a bed of fern leaves and palms. The volume covered a space of two by four feet and was made of chrysanthemums and tuberoses, ornamented with "American Beauty," "Papa Gontier," and "La France" roses and maiden-hair ferns. On one page was the inscription "Indianapolis B. of T., 1889," and on the other the word "Progress," picked out in violets. This piece, as well as a musical design entered by the Bertermanns in an earlier contest, and which was a close second, were universally admired. The second prize design entered was a representation of an old mill made of white chrysanthemums, with wheel and roof of fern leaves and smilax. There was also included a stream of water in which the wheel rested. Mr. Reiman's design, taking third money, was a very striking and effective one. It represented a piece of field ordnance, the cannon and gun-carriage being made of geraniums and chrysanthemums of vivid color, and the whole resting on a bed of fern. The only other prize awarded was $15 cash offered by the New Denison for the best ten chrysanthemum plants of any kind, and this was won by Henry Reiman, of this city.

To-day the Citizens' prize of $20, offered by the Indianapolis Citizens' Street-railroad Company for the most perfect street-car made of cut flowers; the $10 cash prize offered by Grinsteiner & Sons for the best funeral design, and the $10 cash prize offered by Bradley, Holten & Co. for the best agricultural design will be awarded. The usual day and evening concert will be given, and, as this is the last day the display will remain unbroken, the attendance is likely to be the best of the week. Saturday will be devoted to the sale of plants, and the admittance on that day will be reduced to 10 cents. Up to last night Secretary Will Bertermann had indorsed upward of four hundred return railroad tickets, showing that a considerable number of visitors from abroad are among the patrons of the exhibition.

Which Is Usually the Case.

Kansas City Star.

"A Democrat should be a Democrat at all times and at all places," says the Memphis Appeal. Not when the best men are running on the other ticket.

MARRIAGE is not a failure in homes where "Garland" stoves and ranges are used.

PEARS'S Soap secures a beautiful complexion.

The Indiana Hospital Company.

This company contracts to pay $5 to $20 weekly indemnity on sickness or accident, and furnishes doctor and medicines free. For further particulars call at company's office, 98 West Washington street.